

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

,
MICHAEL JAMES NISSEN,

Petitioner,

vs.

No. CV 19-00827 WJ/GJF

WARDEN JUDD, and
UNITED STATES OF AMERICA,

Respondents.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER is before the Court under Fed. R. Civ. P. 41(b) on the Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 filed by Petitioner Michael James Nissen. (Doc. 1). The Court will dismiss this case without prejudice for Petitioner's failure to comply with Court orders and failure to prosecute.

Petitioner Michael James Nissen filed his Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 on September 9, 2019. (Doc. 1). Petitioner also filed an Application to Proceed in District Court Without Prepaying Fees or Costs. (Doc. 8). On March 25, 2020, the Court denied Petitioner's motion for leave to proceed *in forma pauperis* on the grounds that Petitioner's Motion disclosed more than sufficient assets to pay the \$5 filing fee for this proceeding. (Doc. 9 at 1). The Court ordered Petitioner Nissen to pay the \$5 filing fee for this habeas corpus proceeding within 30 days. The Court also notified Nissen that, if he did not pay the \$5 filing fee, the case could be dismissed. (Doc. 9 at 2).

More than 30 days elapsed, and Petitioner did not pay the \$5 fee. Therefore, on May 19, 2020, the Court entered an Order to Show Cause requiring Petitioner to show cause within thirty

(30) days of entry of the Order why this case should not be dismissed for failure to comply with the Court's March 25, 2020 Order. (Doc. 11). The Order also advised Petitioner Nissen that, if he did not show cause within 30 days, the Court could dismiss this proceeding without further notice. (Doc. 11 at 2).

This is a habeas corpus proceeding under 28 U.S.C. § 2241. The filing fee for a § 2241 proceeding is \$5. 28 U.S.C. § 1914. Petitioner did not pay the \$5 filing fee but, instead, filed his Application to Proceed in District Court Without Prepaying Fees or Costs. (Doc. 8). 28 U.S.C. § 1915(a). The Court conducted the analysis of the financial information, including the inmate account statement submitted by Petitioner under § 1915(b)(1), and determined that Petitioner has sufficient financial resources to prepay the \$5 filing fee for commencement of the action. (Doc. 9 at 1). *See Shabazz v. Parsons*, 127 F.3d 1246, 1248-49 (10th Cir. 1997). On March 25, 2020, the Court denied Petitioner leave to proceed pursuant to § 1915 and ordered Petitioner to pay the full \$5.00 filing fee within 30 days. (Doc.9 at 2).

Petitioner Nissen was denied leave to proceed *in forma pauperis* based on his financial ability to pay the \$5 fee. (Doc. 8 at 3-8). He was ordered to pay the \$5 filing fee within thirty (30) days. (Doc. 9). Petitioner did not pay the \$5 filing fee within the thirty-day time period and has never paid the \$5 fee. Petitioner was also ordered to show cause why the case should not be dismissed for failure to comply with the Court's March 25, 2020 Order. Petitioner Nissen did not show cause within 30 days and has never responded to the Court's May 19, 2020 Order to Show Cause. The Court may dismiss an action under Fed. R. Civ. P. 41(b) for failure to prosecute, to comply with the rules of civil procedure, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n. 3 (10th Cir. 2003). Therefore, the Court will dismiss this case for failure to comply with the Court's March 25 and May 19, 2020 Orders and failure to prosecute.

IT IS ORDERED that the Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 filed by Petitioner Michael James Nissen (Doc. 1) is **DISMISSED** without prejudice under Fed. R. Civ. P. 41(b) for failure to comply with Court orders and failure to prosecute.



WILLIAM P. JOHNSON
CHIEF UNITED STATES DISTRICT JUDGE